

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

**CAPITAL ONE, NATIONAL
ASSOCIATION,**

Defendant.

Civil Action No. 4:23-cv-770-SDJ

JURY TRIAL DEMANDED

JOINT RULE 26(f) CONFERENCE REPORT

The parties in the above-captioned case have conferred as required by Fed. R. Civ. P. 26(f) and the Court's Order Governing Proceedings ("Order") (Dkt. 21) and file this joint report.

The Rule 26(f) conference was held on February 29, 2024. Christopher Clayton of Devlin Law Firm LLC participated on behalf of Plaintiff Implicit, LLC ("Plaintiff" or "Implicit"). Erik Halverson and Jonah Heemstra of K&L Gates LLP participated on behalf of Defendant Capital One, National Association ("Defendant" or "Capital One").

1. Suggested modifications of the proposed deadlines for the scheduling order set out in Appendix B

The chart below reflects the parties' proposed case deadlines. There is no disagreement between the parties with respect to any date below. The dates in the chart are written in bold face if the parties propose any modification to the Court's proposed deadline.

Court's Proposed Deadline	Agreed Proposed Deadline	Description
To be discussed at CMC		Mediation. The parties expect to agree upon a mediator and notify the Court by the date identified in the schedule.
Wednesday, March 13, 2024 <i>(No later than 21 days before CMC)</i>	Wednesday, March 13, 2024	Deadline for Motions to Transfer.
Saturday, April 13, 2024 <i>(10 days after CMC)</i>	Monday, April 15, 2024	P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions (and P.R. 3-2 document production) to be served.
Wednesday, May 8, 2024 <i>(5 wks after CMC)</i>	Wednesday, May 8, 2024	Join additional parties. P.R. 3-3 Invalidity Contentions (and P.R. 3-4 document production) to be served. To the extent not already required to be disclosed, exchange Mandatory Disclosures on all issues, including damages.
Saturday, May 18, 2024 <i>(No later than 45 days after CMC)</i>	Monday, May 20, 2024	Parties to exchange proposed terms for construction and identify any claim element governed by 35 U.S.C. § 112, ¶ 6 (P.R. 4-1).
Wednesday, May 22, 2024 <i>(7 wks after CMC)</i>	Wednesday, May 22, 2024	Privilege logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).
Friday, June 7, 2024 <i>(No later than 65 days after CMC)</i>	Friday, June 7, 2024	Parties to exchange preliminary proposed claim construction and extrinsic evidence supporting same. (P.R. 4-2).
Wednesday, July 3, 2024 <i>(13 wks after CMC)</i>	Wednesday, July 3, 2024	Parties' Final Amended Pleadings. (A motion for leave is required.)

Court's Proposed Deadline	Agreed Proposed Deadline	Description
Sunday, July 7, 2024 <i>(No later than 95 days after CMC)</i>	Monday, July 8, 2024	Joint Claim Construction and Prehearing Statement to be filed. (P.R. 4-3). Provide an estimate of how many pages are needed to brief the disputed claims.
Wednesday, July 24, 2024 <i>(16 wks after CMC)</i>	Wednesday, July 24, 2024	Respond to Amended Pleadings.
Tuesday, August 6, 2024 <i>(No later than 125 days after CMC)</i>	Tuesday, August 6, 2024	Completion date for discovery on claim construction. (P.R. 4-4).
Wednesday, August 21, 2024 <i>(No later than 140 days after CMC)</i>	Wednesday, August 21, 2024	Opening claim construction ("CC") brief. (P.R. 4-5(a)).
Wednesday, September 4, 2024 <i>(No later than 2 wks after CC brief)</i>	Wednesday, September 4, 2024	Responsive claim construction brief. (P.R. 4-5(b)).
Wednesday, September 11, 2024 <i>(No later than 7 days after responsive CC brief)</i>	Wednesday, September 11, 2024	Reply claim construction brief. (P.R. 4-5(c))
Monday, August 26, 2024 <i>(4 wks before CC hearing)</i>	Monday, August 26, 2024	Submit technology synopsis/tutorial (both hard copy and disk).

Court's Proposed Deadline	Agreed Proposed Deadline	Description
Friday, September 13, 2024 <i>(At least 10 days before CC hearing)</i>	Friday, September 13, 2024	Parties to file joint claim construction and chart. (P.R. 4-5(d)). Parties shall work together to agree on as many claim terms as possible.
Monday, September 23, 2024	Monday, September 23, 2024	Claim Construction hearing Monday, September 23, 2024, at 10:00 a.m. at the United States Courthouse, 7940 Preston Road, Plano, TX 75024.
Monday, October 28, 2024 <i>(5 wks after CC hearing)</i>	Monday, October 28, 2024	Deadline for Initial Mandatory Disclosure of all persons, documents, data compilations and tangible things, which are relevant to a claim or defense of any party and which has not previously been disclosed. This deadline is not an extension of earlier deadlines set out in this Court's order or the Patent Rules, nor an excuse to delay disclosure of information. It is a "catchall" deadline for provision of all remaining information which may be relevant to a claim or defense of any party at trial.
Monday, November 4, 2024 <i>(6 wks after CC hearing)</i>	Monday, November 4, 2024	Parties shall notify the Court of the name, address, and telephone number of the agreed-upon mediator, or request that the Court select a mediator, if they are unable to agree on one.
Monday, November 25, 2024 <i>(9 wks after CC hearing)</i>	Friday, November 22, 2024	Parties with burden of proof to designate Expert Witnesses other than claims construction experts and provide their expert witness reports, to include for ALL experts all information set out in Rule 26(a)(2)(B). Comply with P.R. 3-7 (Designation of Willfulness Opinions).
Monday, December 9, 2024 <i>(11 wks after CC hearing)</i>	Monday, December 9, 2024	Parties to Designate Expert Witnesses on issues for which the parties do not bear the burden of proof, and provide their expert witness report, to include for ALL experts all information set out in Rule 26(2)(B). Note: Objections to any expert, including <i>Daubert</i> motions, shall be filed within 3 weeks after the expert's Report has been disclosed. Such objections and motions are limited to ten pages each.
Monday, December 16, 2024	Monday, December 16, 2024	Mediation deadline.

Court's Proposed Deadline	Agreed Proposed Deadline	Description
<i>(12 wks after CC hearing)</i>		
Monday, December 23, 2024 <i>(13 wks after CC hearing)</i>	Friday, December 20, 2024	Discovery deadline. All discovery must be served in time to be completed by this date.
Monday, January 13, 2025 <i>(16 wks after CC hearing and no later than 110 days prior to the filing of the Joint Final PTO)</i>	Monday, January 13, 2025	File Dispositive Motions and any other motions that may require a hearing. Regardless of how many dispositive motions a party files, each party is limited to a total of sixty pages for such motions. Each individual motion shall comply with Local Rule CV-7. Responses to motions shall be due in accordance with Local Rule CV-7(e).
Friday, April 11, 2025 <i>(5 wks before final pretrial conference "PTC")</i>	Friday, April 11, 2025	Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order, see www.txed.uscourts.gov , and Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in nonjury cases).
Wednesday, April 16, 2025 <i>(30 days before PTC)</i>	Wednesday, April 16, 2025	Motions in limine due. File Joint Final Pretrial Order. Exchange Exhibits and deliver copies to the Court. At this date, all that is required to be submitted to the Court is a hyperlinked exhibit list on disk (2 copies) and no hard copies.
Friday, April 18, 2025 <i>(4 wks before PTC)</i>	Friday, April 18, 2025	Video Deposition Designation due. Each party who proposes to offer a deposition by video shall serve on all other parties a disclosure identifying the line and page numbers to be offered. All other parties will have seven calendar days to serve a response with any objections and requesting cross examination line and page numbers to be included. Counsel must consult on any objections and only those which cannot be resolved shall be presented to the

Court's Proposed Deadline	Agreed Proposed Deadline	Description
		Court. The party who filed the initial Video Deposition Designation is responsible for preparation of the final edited video in accordance with all parties' designations and the Court's rulings on objections.
Friday, May 2, 2025 <i>(2 wks before PTC)</i>	Friday, May 2, 2025	<p>Response to motions in limine due.</p> <p>File objections to witnesses, deposition extracts, and exhibits, listed in pre-trial order. (This does not extend the deadline to object to expert witnesses.) If numerous objections are filed, the Court may set a hearing prior to the final pretrial conference.</p> <p>File Proposed Jury Instructions/Form of Verdict (or Proposed Findings of Fact and Conclusions of Law).</p> <p>File Proposed Voir Dire Questions.</p>
Friday, May 16, 2025	Friday, May 16, 2025	Final Pretrial Conference at 1:30 p.m. at the United States Courthouse, 7940 Preston Road, Plano, TX 75024.
To be determined		10:00 a.m. Jury Selection and Trial at the United States Courthouse, 7940 Preston Road, Plano, TX 75024.

Agreements Between Parties:

Privilege Logs

The parties agree that they need not log any documents generated after the commencement of this litigation.

a) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;

The parties agree that there is no need for any specific limits on discovery relating to claim construction beyond those set out in the Federal Rules of Civil Procedure.

b) The scheduling of a Claim Construction Pre-hearing Conference to be held after the Joint Claim Construction and Pre-hearing Statement provided for in P.R.4-3 has been filed.

The parties expect to not need a claim construction pre-hearing conference in this matter.

- 2. If the parties believe mediation may be appropriate, and the parties can agree upon a mediator, the name, address, and phone number of that mediator should be stated.**

The parties have discussed the value of mediation and at this point believe that mediation may be beneficial in the future but would not currently be beneficial.

- 3. What changes, if any, should be made to the limitations on discovery imposed by the rules, including the number of depositions and interrogatories.**

The parties believe no modifications need to be made to the normal limitations on discovery as set out in the Order Governing Proceedings.

- 4. The identity of persons expected to be deposed.**

At this time Plaintiff anticipates that any persons expected to be deposed will come from the lists disclosed in the Initial Disclosures. Plaintiff will supplement those disclosures should additional persons be identified who may be expected to be deposed.

At this time Defendant anticipates that any persons expected to be deposed will come from the lists disclosed in the Initial Disclosures. Defendant will supplement those disclosures should additional persons be identified who may be expected to be deposed.

The parties reserve the right to depose additional persons as they may become necessary.

- 5. Any issues relating to disclosure of information (electronically stored and otherwise) including the form or forms in which it should be produced and timing of production. (See Section E - Mandatory Disclosures.)**

None at this time.

- 6. Any issues relating to preserving discoverable information, including whether a Preservation Order is needed to protect any documents and/or electronically stored information.**

The parties certify that they have taken reasonable steps to ensure that documents and things relevant to this action have been (and are continuing to be) preserved. The parties

understand their duties to preserve relevant information and do not believe that a preservation order is necessary.

7. Whether any other orders should be entered by the Court pursuant to Fed. R. Civ. P. 26(c), Fed. R. Civ. P. 16(b), or Fed. R. Civ. P. 16(c).

The parties jointly state that they have met and conferred regarding the Protective Order and will continue to meet and confer to submit a joint proposed Protective Order to the Court.

8. Estimated trial time.

The parties estimate the above captioned action to be tried will require five days.

9. The names of the attorneys who will appear on behalf of the parties at the management conference (the appearing attorney must be an attorney of record and have full authority to bind the client).

It is expected that Christopher Clayton from Devlin Law Firm LLC will attend the Case Management Conference on behalf of Plaintiff.

It is expected that Melissa Smith of Gillam & Smith LLP and Erik Halverson of K&L Gates LLP will attend the Case Management Conference on behalf of Defendant.

10. Any other matters counsel deem appropriate for inclusion in the joint conference report.

Defendant has prepared, and expects to file, *inter partes* review petitions challenging the patentability of the patents asserted in this case. Defendant will seek to stay this case upon filing of those petitions.

Dated: March 15, 2024

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically on all counsel of record through the Court's electronic filing system on March 15, 2024.

/s/ James M. Lennon
James M Lennon